

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FISHER SAND & GRAVEL, CO., and  
FISHER SAND & GRAVEL - NEW MEXICO, INC.,**

**Plaintiffs,**

**v.**

**No. 10-cv-0635 RB/SMV**

**FNF CONSTRUCTION, INC.;  
PULICE CONSTRUCTION, INC.; GARY GIRÓN,  
MAX VALERIO; JED BILLINGS; and  
STEPHEN BASILA;**

**Defendants.**

**ORDER SETTING SETTLEMENT CONFERENCE**

THIS MATTER is before the Court pursuant to a Rule 16 Scheduling Conference held on January 23, 2013. To facilitate a final disposition of this case, a mandatory Settlement Conference will be conducted in accordance with Rule 16(a)(5) of the Federal Rules of Civil Procedure. The conference will be held on **September 9 and 10, 2013, beginning at 9:00 a.m.** each day, in the Cimarron Courtroom, on the fifth floor of the Pete V. Domenici United States Courthouse at 333 Lomas Boulevard Northwest in Albuquerque, New Mexico.

The parties or a designated representative, other than counsel of record, with full authority to resolve the case, must attend in person. Counsel who will try the case must also attend in person. Those attending the settlement conference must treat as confidential the information discussed, positions taken, and offers made by other participants in preparation for

and during the conference.<sup>1</sup> *See generally Hand v. Walnut Valley Sailing Club*, No. 11-3228, 2012 WL 1111137 (10th Cir. Apr. 2, 2012) (unpublished) (affirming dismissal of case as sanction for violating confidentiality of settlement conference).

No later than **August 26, 2013**, Plaintiffs shall serve on Defendants a letter setting forth at least the following information: (a) a brief summary of the evidence and legal principles that Plaintiffs assert will allow them to establish liability; (b) a brief explanation of why damages or other relief would be warranted; (c) an itemization of the principles supporting those damages; and (d) a settlement demand. No later than **August 30, 2013**, Defendants shall serve on Plaintiffs a letter that sets forth at least the following information: (a) any points in Plaintiffs' letter with which the defense agrees; (b) any points in Plaintiffs' letter with which the defense disagrees, with references to supporting evidence and legal principles; and (c) a counteroffer.<sup>2</sup> If a release is contemplated, defense counsel shall include a proposed form of release with the letter. Each of these letters typically should be five pages or fewer, and counsel must ensure that each party reads the opposing party's letter before the Settlement Conference. If the case does not settle, Plaintiffs shall provide copies of these letters to the Court no later than **5:00 p.m. on September 2, 2013**.

No later than **5:00 p.m. on September 2, 2013**, each party must provide the Court, in confidence, a concise position statement (typically no more than ten pages) containing an

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<sup>1</sup> This does not prohibit disclosures stipulated to by the parties, necessary in proceedings to determine the existence of a binding settlement agreement, or as otherwise required by law.

<sup>2</sup> If the parties have engaged in settlement negotiations, Plaintiffs' demand should be lower than Plaintiffs' most recent demand, and Defendants' counteroffer should be higher than Defendants' most recent counteroffer.

analysis of the strengths and weaknesses of its case. Position statements must be submitted to the Court by e-mail at VidmarChambers@nmcourt.fed.us.<sup>3</sup>

Furthermore, if any party has in its possession any video or audio recording of the incident upon which this action is based, that party must submit a copy of the recording to the Court no later than **5:00 p.m. on September 2, 2013**.

The Settlement Conference will not be vacated or rescheduled except upon motion and for good cause shown. Any motion to vacate or reschedule the Settlement Conference shall provide the Court with sufficient notice to ensure that other matters may be scheduled in the time allotted for the Settlement Conference.

**IT IS THEREFORE ORDERED** as follows:

**Plaintiffs' letter and settlement demand due to Defendants:**

**Aug. 26, 2013**

**Defendants' letter and counteroffer due to Plaintiffs:**

**Aug. 30, 2013**

**Plaintiffs provide copies of settlement letters to the Court by:**

**Sept. 2, 2013, by 5:00 p.m.**

**Parties' confidential position statements due to the Court:**

**Sept. 2, 2013, by 5:00 p.m.**

**Settlement Conference:**

**Sept. 9–10, 2013, beginning at 9:00 a.m. each day**

**IT IS SO ORDERED.**

  
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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**

<sup>3</sup> Each e-mail message and its attachments cannot exceed 5 MB. Data exceeding 5 MB should be submitted in individual e-mail messages, each less than 5 MB.